SPECIAL ASSESSMENTS FOR SPECIAL BENEFITS. — Local or special assessments are different in nature from ordinary taxes both in the purposes for which they are levied and in the principles by which they are apportioned. Nevertheless special assessments are properly within the taxing power inherent in sovereignty [1] and therefore, in the absence of express constitutional provisions, are subject to judicial limitation only in so far as such limitation results from the nature of the power itself.[2] The theory upon which special assessments are levied is that, because of the situation of property with reference to some contemplated expenditure of public funds, a portion of the community will be specially benefited by the enhancement of the value of that property, and that those who are to be so benefited should make special contributions to help defray such expenditure.[3] Whether or not a municipality has the power to levy such assessments and the extent of such power if it exists depends not only on the authority which the legislature has actually undertaken to grant to the municipality, but also on the power of the legislature to give such authority. As to this latter limitation it has been generally held that, subject to express constitutional restriction, the legislature may authorize a municipality to levy special assessments for local improvements.[4] But owing to the well-known principle that a delegation of the taxing power must be strictly construed, a general enactment conferring upon a municipality power to levy taxes does not include the power to levy special assessments.[5] Furthermore the limitation on the general taxing power that it must be for a public purpose applies as well to the authorization of special assessments as to other taxes.[6] On the other hand, such limitations as those requiring that "all taxes shall be assessed in exact proportion to the value of the property" or that "taxes shall be equal and uniform throughout the state" have usually been held to apply only to general taxation.[7] Yet there is a limitation on the power to levy special assessments which is not applicable to taxes generally, but which exists even in the absence of express constitutional provisions — a limitation based solely on the nature of the tax. It has been repeatedly held that a special assessment can be justified only when the parties so assessed receive a special benefit over and above that enjoyed by the general public, and only to the extent of that benefit.[8]

The question of the validity of city ordinances providing for the levy and collection of special assessments for street sprinkling involves an application of the foregoing considerations. The few cases that have arisen on this point are in decided conflict. A recent Michigan case holds invalid a statute expressly authorizing cities to levy such assessments, on the ground that there is no substantial special benefit to the property of the parties assessed.[9] *Stevens* v. *City of Port Huron*, 113 N. W. 291. The better view would seem to be that continued and regular street sprinkling does materially increase the enjoyment and hence the value of realty abutting

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1 Raleigh *v.* Peace, 110 N. C. 32.

2 People *v.* Brooklyn, 4 N. Y. 419.

3 See City of Denver *v.* Knowles, 17 Colo. 204; Boston *v.* B. & A. R. R. Co., 170 Mass. 95.

4 *In re* Piper, 32 Cal. 530.

5 City Council of Augusta *v.* Murphey, 79 Ga. 101.

6 *In re* Market St., 49 Cal. 546. See 21 HARV. L. REV. 277.

7 City of Denver *v.* Knowles, *supra*. See 2 Cooley, Taxation, 3 ed., 1201.

8 Hammett *v.* Philadelphia, 65 Pa. St. 146.

9 Accord, Chicago *v.* Blair, 149 Ill. 310; N. Y. Life Ins. Co. *v.* Prest, 71 Fed. 815; Kansas City *v.* O'Connor, 82 Mo. App. 655.

on the sprinkled street, and that this is a special benefit for which special assessments may be lawfully levied, and on these grounds such assessments have been sustained in several states.[10]

LIABILITY OF PUBLIC AGENT FOR INJURY TO PROPERTY RIGHTS. — There is some confusion as to the extent to which a defendant entering into transactions in some special character may be held liable personally for claims arising out of such transactions. An interesting phase of this problem is seen in cases where damage is caused to third persons by a public agent acting under a statute enumerating a certain class of contracts on which he may sue and be sued, and an action not included in this enumeration is brought against the agent for a claim based upon a transaction arising within the course of his employment. Of such a kind is a recent case in which a bankrupt had made payments to certain township trustees intending to prefer the township and the assignee in bankruptcy sought to recover these payments, although such a suit was not one of those enumerated in the statute authorizing the trustees to be sued. *Painter* v. *Napoleon Township*,[1] 156 Fed. 289 (Dist. Ct., N. D. Oh.). The opinion of the court that he should recover such payments is correct, because the defendants were not entitled to priority under the National Bankruptcy Act, and a state statute cannot relieve from liability under a national act.[2] But the case suggests the more difficult question of the trustees' liability when the statute restricting it is not overridden by a national act — a situation that, in the case of a preference, can arise today only where the former statute is federal.

If a private agent of a creditor knowingly receives a preference from a bankrupt, the assignee can recover it from the agent.[3] This is said to rest on the theory that where an agent receives money which the law prohibits him from taking, there is a sort of tortious misdealing with property to which the fact of the agency is no defense. It has been said, however, that a public agent is not liable for injuries to property rights,[4] in that, while he is acting as a public agent, his identity as an ordinary person is merged in his special character, and where the latter is created by statute, liability is restricted to the kind of actions enumerated in the statute. The answer to this reasoning is that the term agent, trustee, or public agent is descriptive and not inherent. A, public agent, is still A, individual. It is a fiction to say that while he is the former he is not the latter. If the agent's negligent acts have caused loss to the plaintiff, or if he has received the plaintiff's property from another, knowing that his principal is being illegally favored and the plaintiff defrauded, he has injured the plaintiff, and should therefore make restitution.[5] This principle is well brought out in a case where the plaintiff paid a sum of money to the defendants, parish-officers, under an illegal contract to indemnify the parish against certain claims. The defend-

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[10] Sears *v.* Boston, 173 Mass. 71; State *v.* Reis, 38 Minn. 371.

[1] A demurrer to the bill was sustained on other grounds.

[2] *In re* Debs, 158 U. S. 564, 579; U. S. Const., Art. VI.

[3] Larkin *v.* Hapgood, 56 Vt. 597; Perkins *v.* Smith, 1 Wils. 328.

[4] Jacobs *v.* Hamilton County, Fed. Cas. No. 7161; Feeholders of Sussex *v.* Strader, 18 N. J. L. 108. *Cf.* Commissioners of Hamilton County *v.* Mighels, 7 Oh. St. 109. *Contra*, Mitchell *v.* Harmony, 13 How. (U. S.) 115; Head *v.* Porter, 48 Fed. 481. And *cf.* May *v* Board of Commissioners, 30 Fed. 250.

[5] *Cf.* Berghoff *v.* McDonald, 87 Ind. 549. *Contra*, Carey *v.* Bright, 58 Pa. St. 70.